



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/266,543	03/11/99	HOLADAY	J 05213-0075 VB

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HM22/12047

EXAMINER HOLLERAN, A

ART UNIT 1642	PAPER NUMBER 14
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DATE MAILED:

12/04/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/266,543

Applicant(s)

Holaday et al

Examiner

Ungar

Group Art Unit

1642



☒ Responsive to communication(s) filed on Sep 14, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire one month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 4-49 is/are pending in the application.

Of the above, claim(s) 30-49 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 4-29 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. The Amendment filed June September 14, 2000 (Paper No. 11) in response to the Office Action of July 6, 2000 (Paper No. 9) is acknowledged and has been entered. Claims 30-49 have been withdrawn from further consideration by the examiner under 37 CAR 1.142(b) as being drawn to non-elected inventions. Claims 4-29 are currently being examined.

2. The response (Paper No. 11) to the restriction requirement of July 6, 2000 has been received. Applicant has elected Group I, claims 4-29 for examination with traverse. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP 818.03(a)).

3. Upon review and reconsideration Restriction to one of the following inventions is required under 35 U.S.C. § 121 because this application contains claims directed to the following patentably distinct species of the claimed invention:

4. The invention is further subject to election of a single disclosed species.

Claims 4/7/8 and 14/17/18 and 24/26/27 are generic to a plurality of disclosed patentably distinct species comprising carriers with different structures and different functions. Applicant is required to elect a single carrier from the fourteen recited in claims 7/8 and 17/18 and 26/27.

5. The invention is further subject to election of a single disclosed species.

Claims 4/9 and 14/19 and 24/28 are generic to a plurality of disclosed patentably distinct species comprising (a) adjuvants, (b) preservatives, (c) diluents, (d) emulsifiers and stabilizers, all of which have different structures and functions. If species (a) were to be chosen, species (a) is further subject to election of a single

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disclosed species wherein the species is one of the eighteen different adjuvants with different structures and mechanisms of action recited in claims 10, 20 and 29.

6. The invention is further subject to election of a single disclosed species.

Claims 4/11 and 14/21 are generic to a plurality of disclosed patentably distinct species comprising hydrophobic moieties with different structures and functions wherein the hydrophobic moiety to be elected is one of the seven species recited in claim 13 and claim 23

7. Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

8. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CAR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

9. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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10. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CAR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CAR 1.48(b) and by the fee required under 37 CAR 1.17(I).

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

12. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Ungar, PhD whose telephone number is (703) 305-2181. The examiner can normally be reached on Monday through Friday from 7:30am to 4pm.

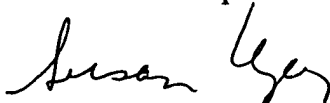
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, can be reached at (703) 308-3995. The fax phone number for this Art Unit is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Effective, February 7, 1998, the Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1642.

Please Note: In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-305-3704. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Ph.D., Supervisory Patent Examiner at 703-308-4315. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.



Susan Ungar
Primary Patent Examiner
December 1, 2000